

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

PROFESSIONAL FIRE FIGHTERS OF  
ST. LOUIS COUNTY, LOCAL 2665  
IAFF, AFL-CIO, CLC,

Petitioner,

v.

EUREKA FIRE PROTECTION DISTRICT,

Respondent.

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Public Case No. R 89-018

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the filing by the Professional Fire Fighters of St. Louis County, Local 2665, of a petition for certification as public employee representative of certain employees of the Eureka Fire Protection District. The sole contested issue is whether or not the District's captains and lieutenants are supervisory employees, who, for that reason, should be excluded from the appropriate bargaining unit. This Board concludes that the captains are supervisors and, therefore, excludes them from the unit. The Board further concludes that the lieutenants are not supervisors and are to be included in the unit.

A hearing was held on May 16, 1989 in Eureka, Missouri, at which representatives of Local 2665 and the District were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, employee member David Langston, and employer member Milton O. Talent. The State Board of Mediation is authorized to hear and decide the issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1986.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence presented, sets forth the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

The Eureka Fire Protection District is a cross-county fire department providing fire protection and emergency medical care. The District covers 81 square miles in St. Louis and Jefferson Counties. At the time of the hearing, the District employed six captains and eight fire fighters, as well as a chief, assistant chief, and deputy chief. One fire fighter position was vacant due to a resignation. Additionally, three new fire fighter positions had been approved and were to have been filled July 1, 1989. Fire fighters, including lieutenants and captains, are also certified as either paramedics or emergency medical technicians.

The District's lieutenants are probationary captains. Lieutenants have the same responsibilities as captains. If a lieutenant successfully completes one year in that position, he or she will become a captain. There are presently no lieutenants in the District.

The District operates out of two fire houses. Both House 1 and House 2 are staffed with three shifts which work rotating 24 hour per day schedules. At full strength, each shift at House 1 is comprised of a captain and two fire fighters. At the time of the hearing, the shifts at House 2 consisted of a captain and one fire fighter. Once the three new fire fighter positions to be created July 1, 1989 are filled, however, House 2 will also have three shifts of one captain and two fire fighters. Additionally there are approximately 40 volunteer fire fighters who work no set schedule, but must work a certain number of hours each month. Six to eight volunteers are assigned to each captain. The District is authorized to carry up to sixty volunteers.

All functions of the District are administered by the chief, subject to the approval of the District's board of directors. The assistant chief assists the chief in his duties and acts as chief when the chief is out of town. Below the assistant chief is the deputy chief, who also assists the chief. These three officers, collectively referred to in the District as chief officers, work Monday through Friday from 9:00 a.m. to 5:00 p.m. at House 1. Additionally, one of the chief officers is on call at all times. If more than one piece of equipment is dispatched by the District to a fire or other emergency situation, it is standard procedure for the chief officer on call to respond to the scene. It is also standard procedure for the responding chief officer to assume overall command of the scene upon arrival. However, in some instances, the chief officer permits the captain who has responded with his crew to retain command.

During their shifts, the captains and fire fighters live at their assigned fire houses. Captains share many of the household chores, such as cleaning and maintenance of buildings and vehicles, with their subordinates. Captains have separate sleeping quarters at House 1, while at House 2 they sleep in the same area as the fire fighters. Captains and fire fighters eat together and engage in recreational activity together.

Captains provide the day-to-day direction to the fire fighters on their shifts. They see that maintenance, safety checks, and other routine duties are completed. They also determine who will perform particular duties. The establishment of the routine duties is primarily the responsibility of the captains. They meet together periodically to formulate or alter standard operating procedures which establish when which shifts are to perform which duties. The captains maintain a daily log in which completion of routine tasks is noted, as well as number of runs for the day and other items of importance.

Captains can require fire fighters to stay after the end of their shift and work overtime if this is necessary. They can also call people in for overtime work to cover manning shortages.

When responding to an emergency call, the captain rides to the scene with the other fire fighters. Once at the scene, the captain assumes command of all operations until a chief officer arrives. As stated above, chief officers, on occasion, permit the captain to retain command. Sometimes chief officers not only leave the captain in command but also stay on the scene to assist the captain in a subsidiary role. If the chief officer does take command, the captain goes to the line to join his fire fighters and volunteers where he provides direct supervision at their particular area of operations.

If only one piece of equipment responds to a call, a chief officer usually does not respond, thereby leaving the captain in charge for the entire time emergency services are needed. It is the captain's responsibility to determine whether additional equipment is needed at the scene. On some ambulance calls, which normally require only one piece of equipment with a two man crew, the captain may choose to remain at the fire house and direct two fire fighters to respond to the call in the ambulance.

All fire fighters in the District must complete a 10-week course of instruction at the St. Louis County Fire Academy. Additionally the fire fighters receive on going training during their work shifts. The captains assess what the training needs of their shifts are and, based on those assessments, determine what types of training programs to schedule for their shifts. Besides their training in fire fighting techniques, captains also are sent to seminars focusing on supervisory skills, such as motivating people, discipline, counseling, and delegating authority.

Captains are paid on a salary basis just as are the chief officers. Fire fighters are paid on an hourly basis. Captains earn approximately \$800 to \$1,000 more per year

than do fire fighter/paramedics with equal seniority. In no case does a captain earn less than any fire fighter.

Both captains and fire fighters receive overtime pay at time and a half, but, overtime is determined differently for captains than it is for fighters. The district has determined that the Fair Labor Standards Act (FLSA) requires fire fighters to receive overtime pay for every hour over 212 hours they work during a 28 day work cycle. Every such cycle contains in excess of 212 scheduled hours, so fire fighters receive overtime pay on regularly scheduled hours. Captains, on the other hand, are considered exempt from the FLSA and are paid overtime by the District only for work done on nonscheduled time.

When it is necessary to hire new fire fighters in the District, a hiring committee is utilized. The hiring committee is composed of the deputy chief and two captains. The duty among the captains rotates so that all captains participate on the hiring committee at some time. The hiring committee conducts interviews of candidates and then each committee member writes a report in which the candidates are assessed and ranked. These reports are forwarded to the chief who reviews them and then presents them to the District's board of directors without making his own recommendations. The board makes the ultimate decision as to who is hired. The board has, for at least the last 5 1/2 years, always followed the recommendations of the hiring committee.

When the District decides to promote a fire fighter to lieutenant, those fire fighters who wish to be promoted undergo a three step process. First, they must successfully complete a written examination. Second, officers from neighboring communities interview the applicants. Third, the current captains in the District also conduct an interview of the applicants. The results of these three stages are provided to the board of directors which makes the ultimate decision with respect to who is

promoted. The last three individuals who were promoted to lieutenant were recommended for promotion by the District's captains. No instance was shown where the board did not follow the captains' recommendations.

Captains have the authority to investigate breaches of District rules or other improper conduct on the part of a fire fighter and if deemed necessary by the captain, to discipline by issuing a verbal or written reprimand or to suspend him for the remainder of his shift. If more severe disciplinary action is called for, the fire fighter's captain and the chief consult to determine what disciplinary action is appropriate. This determination is then passed on to the board of directors for a final decision. Only the board of directors can terminate a fire fighter.

When a fire fighter is a discipline problem or experiences problems with his performance, captains will sit down with that individual and counsel him. Captains also counsel volunteers when necessary. Captains may also issue a job target sheet to employees with discipline or performance problems. The job target sheet serves as a tool to assist the employee in improving in a specific problem area such as tardiness, failure to follow District rules, or acting in an unsafe manner. On the job target sheet, the captain identifies an employee's deficiency, formulates improvement objectives, and outlines procedures for obtaining the objectives. A target date is then set for a review of the employee's performance. Captains also congratulate employees for performing well.

### **CONCLUSIONS OF LAW**

Local 2665 is seeking to be certified as public employee representative of a bargaining unit comprised of fire fighters employed by the Eureka Fire Protection District. The only issue contested in this case is whether or not the District's captains and lieutenants are supervisors. The District contends that they are supervisory employees and, for that reason, should be excluded from the bargaining unit. Local

2665 disputes this contention and argues that the crew chiefs are not true supervisors and therefore should be included in the bargaining unit.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1978 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. MNEA, Springfield Education Support Personnel v. Springfield R-12 School District, Public Case No. UC 88-021 (SBM 1988); see also Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581, 583 (Mo. App. 1977).

In determining the supervisory status of employees within bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

The rotating service of two captains on the District's hiring committee and the acceptance by the District's board of directors of all candidates recommended for hire

by the hiring committee for at least the last 5 1/2 years convinces this Board that the District's captains have authority to effectively recommend the hiring of employees. That the last three individuals recommended for promotion from fire fighter to lieutenant were promoted illustrates the importance of the captains' review of candidates for promotion and establishes the effectiveness of the captains' recommendations for promotion. Captains also play an integral part in the discipline system of the District. Captains are responsible for investigating suspected improper conduct on the part of the fire fighters and they possess authority to impose verbal and written reprimands and suspensions for the remainder of a shift. When more severe disciplinary action is necessary, the captains and the chief consult with one another and jointly decide what action to recommend to the board of directors which makes the final decision.

The captains exercise independent judgment and discretion in directing and assigning their fire fighters and volunteers by necessity because they are the highest ranking officers on regular duty for 16 hours every day through the week and all day on weekends. See Service Employees International Union, Local 50 v. St. Louis Public Library System, Public Case No. 81-010 at page 6 (SBM 1982). The captain at House 2 is always the highest ranking officer on the premises of that fire house, unless a chief officer happens to be there. Although one of the chief officers is on call at all times, there has been no indication that captains commonly need or request guidance. The extent of a chief officer's responsibility when he is on call appears to be to respond to emergency scenes when more than one piece of equipment is dispatched.

Other circumstances illustrate the independence of judgment exercised by captains in directing their subordinates. Captains see that routine duties at the fire houses are completed and are responsible for maintaining the daily log. They assign particular tasks to particular subordinates. They jointly formulate and alter the standard operating procedures so that recurring duties are performed in as efficient a manner as the captains can devise. Captains can require overtime work. They determine what



types of training programs to schedule for their shifts. Captains issue job target sheets to assist employees in improving their performance. Finally, captains assume overall command of emergency scenes until a chief officer arrives. Sometimes the chief officer permits the captain to retain command. If only one piece of equipment is dispatched to a scene, chief officers do not respond, so captains are in charge from beginning to end.

Each captain will exercise authority over two fire fighters after positions created as of July 1, 1989 are filled. The captains are themselves subject to the authority of the three chief officers. The small number of paid fire fighters subordinate to captains could be an indication that captains are not true supervisors. This factor, however, is not the sole consideration. It can be counterbalanced by the Board's findings with respect to the other fire factors it considers in determining supervisory status of a particular position. See Service Employees International Union, Local 50 v. Meramec Valley R-III School District, Public Case No. R 88-001 at page 6 (SBM 1987) (head cooks supervisors despite having an average of only two subordinates each). Besides, the captains in this case also supervise from six to eight volunteers. Supervision of a number of volunteers has been considered by this Board as a circumstance supporting a conclusion of true supervisory status. See International Association of Fire Fighters, Local 2709 v. Liberty Fire Department, Public Case No. 80-006, at page 10 (SBM 1980).

In this case it is particularly relevant that, despite exercising authority over only two paid fire fighter subordinates and being subordinate to three other employees of the District, the captains are, as discussed above, the highest ranking officers on regular duty in the District for all but forty hours out of the 168 hours each week that the station operates. During the 128 hours each week when the chief officers are not on active duty, the captains are the ones to direct and assign the crew members and to assure that the District's policies and procedures are followed. The captains' authority to perform these functions, as also discussed above, is substantial and not just illusory.

Captains are paid approximately \$800 to \$1,000 more per year than are fire fighter/paramedics with equal seniority. No captain is paid less than any fire fighter. Captains receive overtime pay only for working non-scheduled hours. An indication that captains are paid more because of their supervisory skills, rather than for any increased fire fighting skills is provided by the evidence that all District fire fighting personnel receive similar professional training while captains receive special supervisory training not provided to fire fighters.

Captains, on occasion, work alongside fire fighters in fighting fires and in providing emergency medical assistance. They also assist fire fighters in the completion of routine duties at the fire houses. Captains and fire fighters eat together, engage in recreation, and, at House 2, sleep in the same quarters. Despite sharing some work and working conditions with fire fighters, captains are more than simply working foremen. In addition to the work they occasionally share with the fire fighters, captains, as already discussed above, engage in many activities of a true supervisory nature which would not be left to a leadman. To briefly reiterate, captains effectively recommend personnel decisions, assign subordinates to various tasks, counsel subordinates with work problems, determine the standard operating procedure necessary for the efficient functioning of the fire houses, determine when overtime is required of subordinates, determine what training subordinates receive, and are often in overall charge of operations at emergency scenes.

Given the nature and substantiality of these responsibilities, the Board concludes that, even while engaging in routine work, captains remain continually concerned with the proper supervision of their subordinates. Thus, the District's captains spend a substantial majority of their time supervising employees. Further, a review of the numerous supervisory activities of captains convinces this Board that their primary function is the supervision of employees rather than simply the supervision of an activity.

In view of the foregoing, this Board concludes that captains are true supervisors and therefore must be excluded from the appropriate bargaining unit.

With respect to lieutenants, the evidence as a whole was insufficient to warrant the conclusion that they are true supervisors. Lieutenants serve on a probationary status only. They have no apparent assurance that they will be promoted to captain after their year of probation is complete. While captains serve on the District's hiring committee and interview candidates for promotion, it seems that lieutenants do not. The record indicates no difference in pay between lieutenants and other fire fighters. There is also no indication of the degree to which superior officers intervene in the activities of lieutenants as they learn the responsibilities of the position of captain. For these reasons, the Board concludes that the District's lieutenants are not true supervisors and therefore are to be included in the bargaining unit.

### **DECISION**

It is the decision of the State Board of Mediation that an appropriate bargaining unit of employees is as follows: all lieutenants, fire fighters, fire fighter/EMT's, fire fighter/paramedics, and probationary fire fighters of the Eureka Fire Protection District. The chief, assistant chief, deputy chief, and captains of the District shall be excluded from the appropriate bargaining unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or her designated representative, among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or

illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purposes of exclusive representation by Professional Fire Fighters of St. Louis County, Local 2665, IAFF, AFL-CIO, CLC.

It is hereby ordered that the District shall submit to the Chairman of the State Board of Mediation, as well as to the Professional Fire Fighters of St. Louis County, within seven days from the date of this decision, an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 16th day of October, 1989.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant  
Mary L. Gant, Chairman

/s/ David Langston  
David Langston, Employee Member

/s/ Milton O. Talent  
Milton Talent, Employer Member